

1 experience designing machines, did you?

2 A Just simple machines.

3 Q You didn't have any experience designing any
4 machines which were used in the railroad, did
5 you?

6 A Correct.

7 Q You didn't have any experience, for instance,
8 designing on-track equipment, correct?

9 A Correct.

10 Q Certainly during your education you did not have
11 any experience designing Hy-Rail devices,
12 correct?

13 A Correct.

14 Q Did you ever have any experience at all during
15 your education with respect to railroad on-track
16 equipment?

17 A When I got sent to the academy in Oklahoma City
18 in '82 by D.O.T. it was six months of just a
19 tremendous amount of information both on
20 mechanical equipment, mechanical devices,
21 electrical equipment and devices, things that
22 they wanted me aware of should I come across that
23 and be able to at least know what I was looking
24 at.

1 Q So just a general orientation?

2 MR. BYRNE: Objection.

3 Q Is that how you would describe it?

4 A That's what I felt it was.

5 Q Nothing regarding any design?

6 A Correct. Other than looking at multiple designs
7 that were already completed, of course.

8 Q Nothing regarding the repair of any of these
9 devices?

10 A Actually, yes. They would show us typical
11 failures and typical repairs.

12 Q Did you get any experience at that time with
13 Hy-Rail devices?

14 A Yes.

15 Q What was your experience at that time with
16 Hy-Rail devices?

17 A They brought us into a yard. They showed us
18 different types of Hy-Rail gear. Showed us how
19 it operated. Had mechanics explain to us
20 problems that they'd encountered, safety issues
21 that they'd encountered, things that we should be
22 aware of for a good amount of time.

23 Q How long did this course take place?

24 A The entire course in Oklahoma City was six

1 months.

2 Q So how much time did you spend with Hy-Rail
3 devices?

4 A No more than a week.

5 Q Do you know for sure?

6 A It's no more than a week. It was a week.

7 Q This is back in 1978, right?

8 A It was -- actually I think it was back in '82,
9 yeah.

10 Q '82, okay. Mechanical, electrical, HVAC design
11 and inspection, what's that all about?

12 A Those are the courses that they gave us in the
13 six months.

14 Q So it was environmental, health and then all
15 these other things?

16 A Well actually environmental health was, it was
17 the year before at Cameron University.

18 Q That had nothing to do with Hy-Rail devices, did
19 it?

20 A Correct.

21 Q Any other education that's not listed on your
22 curriculum vitae?

23 A Well, of course, much like yourself we're
24 required the continuing education requirements

1 Q Did you ever have a Hy-Rail truck assigned to
2 you?

3 A Oh, no.

4 Q How often did you actually ride in one during
5 that period of time, '82 to '83?

6 A Not that often. Once, twice, three times maybe.

7 Q In your whole career there, once, twice or three
8 times?

9 A Correct.

10 Q You rode in somebody else's Hy-Rail truck?

11 A Correct.

12 Q That was some employee of the railroad?

13 A They would assign them to me and I would be taken
14 to wherever they wanted me to see.

15 Q Do you recall what type of Hy-Rail devices were
16 attached to those vehicles?

17 A I do not.

18 Q Do you recall if they were Fairmont/Harsco
19 Hy-Rail devices?

20 A I do not.

21 Q So you don't know if those devices were the same
22 types that were used, that were involved in the
23 case that we're talking about now?

24 A Correct.

1 Q Do you have any memory of how those devices
2 operated?

3 A My memory recall is that they operated manually
4 much like this device. We used a bar. We set
5 them in place. They locked. And then unlocked
6 it and put 'em back on.

7 Q Of those two or three times that you rode in the
8 Hy-Railer you say you assisted in getting the
9 wheels on or off the tracks?

10 A Correct.

11 Q I mean the pilot wheels?

12 A Correct.

13 Q What did you do to assist in that process?

14 A Raised and lowered them.

15 Q You actually did it?

16 A Yes.

17 Q You were shown how to do it by whom?

18 A By whoever the operator of the truck was.

19 Q How many times during that two- or three-year
20 period back in the early '80's did you actually
21 assist in the operation of the Hy-Rail device?

22 A To raise and lower?

23 Q Yes.

24 A No more than a half dozen times.

1 Q During those times did you ever inspect the plans
2 for any of these Hy-Rail devices?

3 A Well I certainly saw the manuals as a matter of
4 interest. They were in the trucks that we were
5 driving in and it was just for me natural to read
6 through them to see how it worked.

7 Q You did that before you would operate them?

8 A Actually, no. The operator showed me what he was
9 doing. I wanted to do it myself. And then I
10 would read the manuals as we were driving along
11 the rail.

12 Q Do you know the names of any of these operators?

13 A Oh, not at all.

14 Q Do you know if any of those manuals were similar
15 or the same manual involved in this case?

16 A I really don't recall.

17 Q Other than operating the manuals (sic) did you do
18 any further inspection to try to figure out
19 exactly how those Hy-Rail devices worked?

20 MR. BYRNE: Objection.

21 A At that time, no.

22 Q You understand what I mean by that question,
23 don't you?

24 A I do.

1 Q For instance, they were using, you felt there was
2 a bridge in town that couldn't support the
3 weight?

4 A It was falling apart. Correct.

5 Q You were afraid that if the railroad was
6 operating trains over it that it might affect the
7 public safety?

8 A Correct.

9 Q But you weren't involved in the design of any
10 railroad equipment during this time at Gailor
11 Associates?

12 A No.

13 Q You weren't involved in failure analysis during
14 this time, were you, '85 to '89, failure design
15 for equipment?

16 A Equipment, no.

17 Q You weren't involved in mechanical engineering
18 either at Saratoga Associates or at Gailor
19 Associates, correct?

20 A Actually we offered mechanical engineering at
21 Gailor Associates. I had subordinate engineers
22 who were mechanical engineers.

23 Q Did you, yourself, work as a mechanical engineer
24 at either Saratoga Associates or Gailor

1 Associates?

2 A No.

3 Q I take it from '84 to '99 when it was Saratoga
4 and Gailor you never worked on any Hy-Rail
5 devices; is that fair to say?

6 A Correct.

7 Q You never designed any, right?

8 A Correct.

9 Q You never maintained any, correct?

10 A Correct.

11 Q You never repaired any, correct?

12 A Correct.

13 Q You never inspected any, correct?

14 A Correct.

15 Q You never operated any, correct?

16 A Correct.

17 Q I take it you didn't keep yourself up to date
18 with the latest modifications to Hy-Rail devices
19 during that time period from '84 to '99, correct?

20 MR. BYRNE: Objection.

21 A Correct.

22 Q As a matter of fact, you probably didn't review
23 any literature at all pertaining to the Hy-Rail
24 devices during that time period?

1 A Up to '99?

2 Q Right.

3 A Correct.

4 Q Now did Gailor Associates do any forensic
5 engineering?

6 A No.

7 Q So your work with attorneys did not start until
8 you went to Harlan-McGee?

9 A For the most part. I mean, you know,
10 acquaintances who were attorneys would ask for
11 information from time to time, you know, some
12 input or ways to analyze things. But not really.

13 Q You never gave -- you were never hired as an
14 expert to give an opinion in a legal case from
15 '84 to '99; is that fair to say?

16 A I probably was, but they were very minor cases.

17 Q Nothing involving railroad equipment?

18 A Oh, no, not at all.

19 Q Nothing involved Hy-Rail devices?

20 A Correct.

21 Q Between '84 and '99 when you were with Saratoga
22 Associates and Gailor Associates is it fair to
23 say that you never had any railroads as clients?

24 A That's correct.

1 Q Is it also fair to say that you never had
2 Fairmont/Harsco as a client?

3 A That's correct.

4 Q Is it also fair to say that you never had as a
5 client any other entity which manufactured or
6 designed Hy-Rail devices?

7 A Correct.

8 Q Now in your curriculum vitae it does say that you
9 started with Harlan-McGee in 1991 and have worked
10 there until the present. Is that a typo or a
11 mistake?

12 A No. Actually I think they were out there in '91
13 and had approached me and we were just making
14 ourselves available. It was like -- there wasn't
15 a lot of work with them until after '99.

16 Q So earlier you said that you might have worked on
17 some minor cases?

18 A Right.

19 Q Is that what you were referring to?

20 A Correct.

21 Q So those minor cases were things that you did
22 through your contacts with Harlan-McGee?

23 A Right. As maybe once or twice a year, if that.

24 Q Is it fair to say that Harlan-McGee is kind of

1 Q Have you ever designed a machine?

2 A No.

3 Q Have you ever worked for any company that has
4 designed a machine?

5 A No.

6 Q Of course, as I take your experience, you never
7 worked for any company which designed Hy-Rail

8 devices, correct?

9 A Correct.

10 Q You never worked for any company which repaired,
11 maintained or inspected Hy-Rail devices, correct?

12 A Correct.

13 Q It's never been part of your day-to-day
14 activities of your job at any, for any job that
15 you've held to operate, maintain, repair and/or
16 inspect Hy-Rail devices, correct?

17 A Other than what's previously mentioned, correct.

18 Q Other than the two or three times that you
19 operated?

20 MR. BYRNE: Objection.

21 A Correct.

22 Q What I'm saying is through all the jobs you've
23 held it's never been part of your day-to-day
24 activities to go out and operate a Hy-Rail

1 device, correct?

2 A Correct.

3 Q It's never been part of your day-to-day
4 activities to repair a Hy-Rail device, correct?

5 A Correct.

6 Q It's never been part of your day-to-day
7 activities to inspect a Hy-Rail device, correct?

8 A Correct.

9 Q Or to repair one, correct?

10 A Correct.

11 Q You also claim to be an expert in slip-and-fall
12 accidents?

13 A Correct.

14 Q In blasting?

15 A Correct.

16 Q In safety devices?

17 A Correct.

18 Q For use in construction sites, correct?

19 A Correct.

20 Q You also claim to be an expert with respect to
21 pedestrian safety?

22 A Correct.

23 Q You claim to be an expert with respect to
24 premises liability?

1 Q Only one site inspection?

2 A Correct.

3 Q Now earlier you mentioned another Hy-Rail case
4 that you had.

5 What was the name of that case?

6 A It was with C.P. Rail at the Selkirk yard.

7 Q C.P. Rail at the Selkirk yard. Who were you
8 retained by, plaintiff or defendant?

9 A We were asked to come in -- you know, it never
10 really went to suit. It was an investigation as
11 to why a piece of gear had derailed in a
12 construction site.

13 Q An investigation as to how a piece of gear
14 derailed?

15 A Correct.

16 Q Who asked you to come in and look at it?

17 A I think C.P. Rail did.

18 Q Do you know who at C.P. Rail you dealt with?

19 A I do not.

20 Q Did you prepare a report?

21 A We did.

22 Q When was this, by the way?

23 A Oh, this was a few years ago, four or five years
24 ago.

1 Q So Harlan-McGee might still have your report?

2 A Correct.

3 Q Did anyone else from Harlan-McGee go out and
4 check this out?

5 A No.

6 Q What kind of a piece of equipment derailed?

7 A It was a pickup truck with Hy-Rail gear driving
8 through a construction site. There were some
9 improvements going on to the facility at Selkirk.
10 The truck had jumped off the track. And after
11 all the shouting died down they asked us to
12 figure out what was wrong or what was going on at
13 the site that would make this -- it had jumped
14 off more than once. Why it was coming off the
15 track.

16 Q So did you look at the track?

17 A We looked at the track and we, you know, there
18 was a lot of construction debris in the area. We
19 felt that the construction debris was
20 contributing to it. And that the wheel that kept
21 hopping off actually hadn't been adjusted
22 properly, was a little light compared to the
23 weight that was down on the other wheels. And it
24 had a propensity once it hit the brake to jump

1 off the light side.

2 Q Which wheel was it?

3 A It was the driver's side front.

4 Q Same as --

5 A Oh, same as this, right, yeah.

6 Q What type of a Hy-Rail gear was it?

7 A If I recall, it's the same type of gear as this.

8 Q Was it Fairmont/Harsco?

9 A Correct.

10 Q Do you recall whether it was a 307 or 307A or
11 something else?

12 A I don't recall.

13 Q Do you recall if it was an easy lift? Was it
14 manual or hydraulic?

15 A It was manual.

16 Q Was it an easy lift with gears or without?

17 A I don't recall.

18 Q Or was it not an easy lift?

19 A My recollection is it was not an easy lift.

20 Q So then it was different than the type in this
21 case, correct?

22 A Correct.

23 Q Because you know that in this case it's an easy
24 lift?

1 MR. BYRNE: Objection.

2 Q You know that there's a distinction, correct?

3 A Yes.

4 Q As I understand it, the easy lift has a socket on
5 both the top and the bottom, correct?

6 A Correct.

7 Q Whereas the non-easy lift only has a socket on
8 the bottom, correct?

9 A Right.

10 Q So it was a different piece of, a different type
11 of Hy-Rail device altogether, correct?

12 MR. BYRNE: Objection.

13 A Yeah, it was a different piece of Hy-Rail device.

14 Q Different in its design, correct?

15 A Well it hadn't been outfitted with the -- I mean,
16 with the exception of the easy lift apparatus
17 everything else is the same.

18 Q But that's a big difference, right?

19 A It is for the operator.

20 Q The whole operating procedure is different,
21 correct?

22 A Correct.

23 Q It's about twice as many steps, correct?

24 A Well it's tougher, yeah.

1 Q You came to the conclusion in that case that
2 there were two things that were causing the
3 derailment, right?

4 A Correct.

5 Q Was anyone hurt in that, by the way?

6 A No. Just a lot of aggravation.

7 Q That case never went to suit as far as you
8 understood it?

9 A No.

10 Q The other thing you found out was that the wheel
11 had been adjusted improperly, right?

12 A Correct.

13 Q As I understand, there's like a torque setting on
14 these wheels; is that fair to say?

15 A You can adjust them so they address the rail at
16 different weights.

17 Q That's because they have to have a sufficient
18 amount of torque to get the body of, or the frame
19 of the vehicle up off the rail enough so that
20 it's rolling on its guide wheels while still
21 being driven by --

22 A That's correct.

23 Q If you go too much you're not going to have, you
24 won't be able to drive it?

1 A You won't go anywhere.

2 Q Because the rubber wheels won't be touching the
3 track?

4 A Correct.

5 Q If you have not enough it's going to derail
6 because there's not enough pressure on the pilot
7 wheel?

8 A Correct.

9 Q There's a simple adjustment that can be made,
10 correct?

11 A Correct.

12 Q What you found in this case for C.P. Rail was
13 that adjustment was improper, correct?

14 A For that one wheel, correct.

15 Q It wasn't adjusted high enough, correct?

16 A Correct.

17 Q Do you know what was done in response to that?

18 A It was just adjusted.

19 Q Then it was fine after that?

20 A Yes -- well then they kept the debris off the
21 track, yeah.

22 Q What evidence led you to that conclusion that it
23 was improperly, the torque was improperly
24 adjusted?

- 1 A We checked them all.
- 2 Q You found that the other three were higher?
- 3 A Yeah, and the fourth one wasn't.
- 4 Q You know in this case the adjustment of the
- 5 torque has nothing to do with it, in the
- 6 Papadakis case, correct?
- 7 A Correct.
- 8 Q I mean, I've read your report. There's nothing
- 9 in your report about the adjustment of the
- 10 torque, correct?
- 11 A Correct.
- 12 Q In your professional opinion the torque
- 13 adjustment had nothing to do with it, correct?
- 14 A Correct.
- 15 Q In fact, you know that there's no evidence in
- 16 this case that the torque was improperly
- 17 adjusted, correct?
- 18 A Correct.
- 19 Q As a matter of fact, you've read Mr. Ebert's
- 20 deposition, right?
- 21 A Yes.
- 22 Q From TNT Repairs?
- 23 A That's correct.
- 24 Q By the way, was TNT involved with C.P. Rail?

1 Q They don't show what you believe occurred to Mr.
2 Papadakis in these photographs, correct?

3 A Oh, no, we have no pictures of the overcamming,
4 no.

5 Q Have you ever -- do you have any information from
6 any source other than the Harsco Web site web
7 site about overcamming of the wheel?

8 A Yes.

9 Q What source is that?

10 A Richard Sanderson.

11 Q Other than Mr. Sanderson do you have any
12 evidence, any evidence of overcamming with
13 respect to this Hy-Rail device?

14 A No.

15 MR. BYRNE: Objection.

16 Q Who is Mr. Richard Sanderson?

17 A He's a retired railroad worker.

18 Q Have you ever met him?

19 A Only have spoken with him over the phone.

20 Q Once?

21 A A couple of times.

22 Q More than twice?

23 A Possibly three. Certainly no more than three.

24 Q Two to three times?

1 A Correct.

2 Q How long were these conversations with him?

3 A The first one was probably ten minutes. The
4 second one was at least half an hour. If there
5 was a third one then it was another fifteen
6 minutes.

7 Q So less than an hour total?

8 A Correct.

9 Q You were put in touch with Mr. Sanderson by
10 plaintiff's counsel, correct?

11 A Correct.

12 Q This isn't somebody you sought out, correct?

13 A Correct.

14 Q Why was it that plaintiff's counsel put you in
15 touch with Mr. Sanderson?

16 A He felt he was a very knowledgeable individual.

17 Q Were you put in touch with Mr. Sanderson because
18 you were having problems coming to an opinion in
19 this case?

20 A We were working --

21 MR. BYRNE: Objection.

22 Q First of all, just yes or no, and then you can
23 explain it for me.

24 A Oh, I was having no problem coming to opinions.

1 Q Even though your first hypothesis was not proven?

2 A That was -- that's true.

3 Q Are you put in touch with Mr. Sanderson after
4 your first hypothesis is put aside?

5 A It's probably about the same time that we were
6 trying to come to, I was trying to come to
7 conclusions.

8 Q You were just saying we were trying to come to
9 conclusions?

10 A I always say we. I've got a mouse in my pocket.

11 Q Did you mean you and plaintiff's counsel?

12 A No, no, no, no.

13 Q So you're trying to come to this conclusion.
14 Your first hypothesis you put aside.

15 Are you searching at that point in time for
16 a second hypothesis?

17 A Well I've got a conflict of information. I've
18 got, I've got EBT's that are, have conflicting
19 information.

20 Q So you're having a problem coming to a
21 conclusion?

22 A I am.

23 Q At that point in time you don't have any opinion;
24 is that fair to say?

1 A Ah, shoot.

2 Q I'll show you one thing, okay, first. I have a
3 memorandum. It's dated June 21, '05 to the Paul
4 Papadakis file apparently from Mr. Byrne, subject
5 Mr. Richard Sanderson. Okay?

6 A Good.

7 MR. FLYNN: Let me have that marked as the
8 next exhibit.

9 (Memorandum dated June 21, 2005,
10 marked as Exhibit No. 9.)

11 Q Does that refresh your recollection as to when
12 you were put in touch with Mr. Sanderson?

13 A Yes.

14 Q That was in about June of 2005?

15 A That would have been in June of 2005, right.

16 Q So it's still two months before you prepared your
17 first report, correct?

18 A Correct.

19 Q May I see that for a second. Basically this memo
20 tells you what Mr. Sanderson's qualifications
21 are, correct?

22 A Correct.

23 Q You would consider him to be somebody that's more
24 experienced with Hy-Rail devices than you, right?

1 A Oh, yes.

2 Q He would be more expert with respect to that
3 issue, correct?

4 A Correct.

5 Q You were being put in touch with Mr. Sanderson,
6 sir, for a couple of reasons, correct?

7 MR. BYRNE: Objection.

8 A I don't know.

9 Q Well do you have an understanding as to why you
10 were being put in touch with Mr. Sanderson?

11 A He was a resource.

12 Q Because you were having problems coming to an
13 opinion, correct?

14 A No.

15 MR. BYRNE: Objection.

16 Q Was it to help educate you as to how these
17 Hy-Rail devices work?

18 A No.

19 Q Was it to help educate you as to how Hy-Rail
20 devices might fail?

21 A I don't believe so.

22 Q Well then why were you put in touch with Mr.
23 Sanderson?

24 A Additional resource.

1 Q About what issue?

2 A You asked me questions about what books I read,
3 what publications were available. This is the
4 same kind of resource as a book or publication.
5 This is an individual who has 41 years of
6 experience who is maybe able to answer a question
7 or two about the conflicts that are there in the
8 various EBT's.

9 Q The conflicts in the record?

10 A In the record, correct.

11 Q When you go to review any resource it's because
12 you're trying to educate yourself on something,
13 correct?

14 A It's always good to know what's out there.

15 Q Well that's what you do when you look at a parts
16 manual, correct? That's because you want to find
17 out what parts are involved in something, right?

18 A I understand the question you're asking. I don't
19 know how much more education other than
20 clarification I would get.

21 Q But when you're testifying about bleacher design
22 you go look at the actual plans of the bleacher,
23 correct?

24 A I would.

1 Q You go and look at perhaps articles that are
2 written about how bleachers are put together,
3 correct?

4 A I would.

5 Q And you'd look at articles as to the different
6 formulas and things for the structural analysis
7 of bleachers, correct?

8 A Correct.

9 Q You go to those resources so that you can learn
10 those things, correct?

11 A Learn them, learn them in the same way that you
12 would drive a car. You don't learn to drive a
13 car every time you get into it. That's what
14 you're saying.

15 Q Right.

16 A I don't learn. The resources are there to use.

17 Q Certainly Mr. Sanderson was a resource that you
18 felt that you wanted to take advantage of, right?

19 A I would, yes.

20 Q You didn't know about this gentleman until
21 plaintiff's counsel put you in touch with him,
22 correct?

23 A Correct.

24 Q Do you know what the relationship is between

1 plaintiff's counsel and Mr. Sanderson?

2 A I don't.

3 Q Do you know if there is one?

4 A I don't.

5 Q Do you know if they've worked together in the
6 past?

7 A I don't.

8 Q What did you do after receiving this memo in June
9 of 2005, Exhibit 9?

10 A Gave Mr. Sanderson a call.

11 Q Then you had those two or three conversations you
12 spoke about?

13 A Correct.

14 Q In fact, he wrote a memo to you about how the
15 accident, well how he thought the accident
16 occurred, correct?

17 A Correct.

18 Q Your report is based in large part on that memo
19 that Mr. Sanderson sent to you, correct?

20 MR. BYRNE: Objection.

21 A He had reached the same conclusion I had at that
22 time.

23 Q Well he actually put it -- when did you get this
24 writing from him?

- 1 A I don't recall.
- 2 Q It was before you did your report, wasn't it?
- 3 A I believe it was probably after we were done, or
- 4 close to being done.
- 5 Q Sir, was it before or after you did your report?
- 6 A During.
- 7 Q During?
- 8 A Could very well be during.
- 9 Q So what's your best memory?
- 10 A I don't recall.
- 11 Q You certainly had not committed your opinions to
- 12 a final writing at the time that you got this
- 13 letter from Mr. Sanderson, correct?
- 14 A I think the letter was more confirmation for us
- 15 than anything else, for me than anything else.
- 16 Q Well actually it reads, in large part it reads
- 17 almost verbatim in certain parts that your report
- 18 does, correct?
- 19 A That's because I sent him a copy of my report.
- 20 Q Is that what happened? You sent him a report and
- 21 he sends back this letter?
- 22 A I wanted to know his opinion.
- 23 Q After you send him your report?
- 24 A Correct.

1 Q So he's plagiarizing from your report?

2 A I don't think he's plagiarizing. I think he's
3 doing a very good job.

4 Q Why don't you pull his report out of your file,
5 sir?

6 A Oh, I have a copy of his report, but it was
7 supplied here by counsel.

8 MR. FLYNN: Can we have that marked.

9 A It's in here but...

10 MR. BYRNE: This one came from my file.

11 MR. FLYNN: Can I mark that one, Bob?

12 MR. BYRNE: Why don't we make a photocopy of
13 it.

14 MR. FLYNN: Sure. Thanks, Bob.

15 Can I have these next two documents marked
16 as Exhibits 11 and 12. 11 is a report on
17 Harlan-McGee, dated August 24, 2005 on
18 Harlan-McGee letterhead. Exhibit 12 is a report,
19 same date, but it's the one, it's a copy of what
20 you faxed to me on August 31st of 2005.

21 (Mr. Sanderson's Report, marked as
22 Exhibit No. 10.)

23 (Report dated August 24, 2005,
24 marked as Exhibit No. 11.)

1 (Report dated August 24, 2005,
2 marked as Exhibit No. 12.)

3 Q Now do you have Mr. -- if you can look at Exhibit
4 10, sir. It's Mr. Sanderson's report.

5 You've seen this before, obviously, correct?

6 A Yes.

7 Q You just don't have a specific memory of when you
8 received it, correct?

9 A Correct.

10 Q I believe it's been your testimony that it was
11 while you were working on your report, correct?

12 A Correct.

13 Q You say that you sent him a draft of your report
14 before he prepared this document, correct?

15 A I believe so.

16 Q He does say what he has reviewed in the first
17 eight numbered paragraphs of his letter, doesn't
18 he?

19 A He doesn't say what he reviewed. He says, "My
20 opinion is based on".

21 Q He does not list there anything that he received
22 from you, does he?

23 A That's good.

24 Q Does he?

1 A That's correct.

2 Q Then he goes on to describe how he feels the
3 accident happened, correct?

4 A Correct.

5 Q Now let's look at Exhibit 11. By the way, how
6 many different reports have you done in this
7 case?

8 A Once again, to refresh your memory, I said two.

9 Q I've got to get another one out. Hold on a
10 second.

11 (Report dated August 24, 2005,
12 marked as Exhibit No. 13.)

13 Q Let me show you a copy of Exhibit 13, sir. It's
14 a report from you dated August 24, 2005, okay.
15 Just look at the second page. There's no
16 mention of Mr. Sanderson at all, is there?

17 A Correct.

18 Q Is that the first draft of your report?

19 A Yes.

20 Q Look at Exhibit 11, okay. That's another draft
21 of your report, correct?

22 A Correct.

23 Q That does contain a reference to Mr. Sanderson,
24 correct?

1 A Yes.

2 Q That one is also dated August 24, 2005, correct?

3 A Correct.

4 Q Now, sir, what specific date was your first
5 report, Exhibit 13 committed to writing?

6 A I don't recall.

7 Q Was it August 24, 2005?

8 A It could very well have been.

9 Q Which was generated from your computer, correct?

10 A Right.

11 Q So if you were to download your computer
12 information it would include in the word
13 processing software the dates that you actually
14 prepared these drafts, correct?

15 A I think it shows you the latest date you worked
16 on it.

17 Q What kind of software do you have?

18 A We're using Microsoft Word.

19 MR. FLYNN: I ask that that be downloaded as
20 it exists and put it on a disk as well as -- I
21 want the current draft as well as any prior
22 drafts. Okay, Bob?

23 MR. BYRNE: Give me the list of all of this
24 after the deposition.

1 MR. FLYNN: We will after we get the
2 deposition. Will you agree to provide that, Bob?

3 MR. BYRNE: I'll provide what's required by
4 the rules. I have to do a little research when I
5 go home.

6 MR. FLYNN: So we don't have an agreement.
7 A little research?

8 MR. BYRNE: Not until I satisfy myself that
9 you're entitled to it.

10 Q Now how long did it take you to get from Exhibit
11 13, the draft, unsigned draft dated August 24,
12 2005 to Exhibit 11 which is the draft of the same
13 date on Harlan-McGee letterhead?

14 A I don't know.

15 Q Was it days, hours, minutes; how long?

16 MR. BYRNE: Objection. Asked and answered.

17 A Thank you.

18 Q Well no, you didn't. You said you didn't know.

19 MR. FLYNN: I'm trying to probe his memory.

20 MR. BYRNE: That's his answer.

21 Q Was it a matter of hours?

22 A I don't know.

23 Q Was it a few days later?

24 A I don't know.

1 Q What transpired between the first draft, Exhibit
2 13, and the second one, Exhibit 11?

3 A I don't recall.

4 Q Why was it that you decided to insert a reference
5 to Mr. Sanderson in Exhibit 11 which had not been
6 there, which was not there in Exhibit 13?

7 A Must have spoken with him.

8 Q Spoken with him?

9 A Sanderson is in both. 13, 11. Sanderson is in
10 both.

11 Q Can I see Exhibit 13, please?

12 A Sure.

13 Q In the second paragraph of Exhibit 13 you say
14 that there was a review conducted and that you
15 performed the review, correct?

16 A Correct.

17 Q In Exhibit 11 in that second paragraph you have
18 now changed it to say that you and Mr. Sanderson
19 performed the review, correct?

20 A Oh, okay, correct. I see Sanderson's name under
21 "information available".

22 Q Well why did you make that change?

23 A After additional conversation with him.

24 Q Did you have -- did anyone tell you to put that

1 change in the record?

2 A No.

3 Q Did you actually type that in or did somebody
4 else?

5 A No, I believe I did.

6 Q In "information available" in Exhibit 13 you say
7 in Line 8, "Richard Sanderson interview". On
8 Exhibit 11 you say "Richard Sanderson interview
9 and consultation".

10 Did I read that correctly?

11 A Correct.

12 Q Why did you make that change?

13 A I think that was after the second time we spoke.

14 Q After that you make no other mention of Mr.
15 Sanderson in either of these, do you?

16 A We list him as under the "respectfully submitted"
17 to identify that he's contributed to the article.

18 Q If you look at Exhibit 12 this is yet another
19 report, correct?

20 A Correct.

21 Q Do you recall the date of that, what the actual
22 date was that you prepared that one?

23 A I don't.

24 Q Was it after August 24th of 2005?

1 A It was definitely after my first draft.

2 Q Days after, weeks after; how long after?

3 A I don't know.

4 Q You've added a paragraph to Exhibit 12 which is
5 not contained in Exhibit 11 and 13, correct?

6 A Correct.

7 Q It's a paragraph about Mr. Sanderson, correct?

8 A Correct.

9 Q Now would you refer to Exhibit 13, please, or
10 actually you can go to Exhibit 12. I would like
11 you to also get out the Sanderson letter which is
12 Exhibit 10, I believe. Sir, your report, Exhibit
13 12, on the third page at the very top of it, the
14 first full sentence reads, "This is accomplished
15 by removing the lock pin and then inserting the
16 hand lever into the lower socket pushing downward
17 to release the pressure on the locking Paul.
18 This releases the mechanical lock and allows the
19 guide wheel to be placed into the lower rail
20 position", end of quote.

21 Did I read that correctly?

22 A Correct.

23 Q Look at Mr. Sanderson's letter dated, undated
24 letter, if you look at the second full paragraph,

1 the last sentence of it?

2 A Got it.

3 Q Quote, This is accomplished by removing lock pin
4 and then inserting hand lever into lower socket
5 and pushing downward to release pressure on
6 locking Paul lever releasing the mechanical lock
7 and lower guide wheel assembly to lower rail
8 position, end of quote.

9 Did I read that correctly?

10 A Yes, you did.

11 Q It's virtually the same thing that you've written
12 in your report, isn't it?

13 A That's correct.

14 Q Did you copy what he either told you or put in
15 his report?

16 A I believe we both got it out of your manual.

17 Q Sir, it's almost the exact same language as this
18 report, correct?

19 A Obviously he had input to this final report that
20 was released.

21 Q Is it just a coincidence that you were both using
22 the exact same language?

23 MR. BYRNE: Objection.

24 A I don't think so. Why would that even be a

1 problem?

2 Q Because I have a letter from a person who has not
3 been identified as an expert who you were put in
4 touch with because you were having problems
5 getting an opinion. Then all of a sudden --

6 MR. BYRNE: Objection.

7 Q -- we have a report which has the exact same
8 language in it.

9 MR. BYRNE: Objection.

10 Q Did I answer your question now?

11 A Not very well, but keep on going.

12 Q Do you see where my concern is?

13 MR. BYRNE: Objection.

14 A I see what you're trying to do. But go ahead.
15 Continue.

16 Q Let's look at the next sentence of your report.
17 Quote, He then removed a hand lever.

18 That wouldn't have come from a manual, would
19 it?

20 Sir, would you review your report, please?

21 A I can see it.

22 Q Well I would like you to read along with me
23 because I'm going to ask you if I read it
24 correctly. Or do you have enough of a memory

1 that you know what it says?

2 MR. BYRNE: Objection.

3 Q You know it well enough without looking at it?

4 MR. BYRNE: Objection. He said he was
5 looking at it.

6 MR. FLYNN: He's not.

7 MR. BYRNE: You're being abusive. He's
8 looking at his report.

9 MR. FLYNN: I'm asking the man to look at
10 it. He's looking right at me.

11 MR. BYRNE: He's looking at his report.
12 It's right in front of him.

13 MR. FLYNN: Well let's let the record
14 reflect what's going on.

15 Q Quote, He then removed the hand lever and
16 inserted it into the upper socket of the easy
17 lift assembly. He then pushed down on the hand
18 lever forcing the guide wheel down until the
19 spring-loaded locking mechanism fully engaged
20 securing the assembly in the rail position. He
21 then inserted the lock pin into place securing
22 the locking Paul, end of quote.

23 Did I read that correctly?

24 A Correct.

1 Q If you look at the very next sentence of Mr.
2 Sanderson's report, quote, He would then remove
3 the hand lever and insert it into, in the upper
4 socket of the easy lift conversion assembly and
5 push down on the hand lever forcing the guide
6 wheel down until the spring-loaded locking
7 mechanism fully locks securing the assembly in
8 the rail position. He would then insert the lock
9 pin securing the locking Paul, end of quote.

10 Did I read that correctly?

11 A Correct.

12 Q It's virtually the same thing in your report that
13 we find in Mr. Sanderson's report, correct?

14 A It's the same description of what happens when
15 you use the equipment.

16 Q Which did not come from the manual, did it?

17 A Well what you're reading from are two different
18 letters.

19 Q I understand that. But your explanation as to
20 the coincidence earlier was that it was just you
21 both put down what was in the manual?

22 A That's what the manual says to do.

23 Q The manual says that, "He then removed the hand
24 lever"?

1 A This is what the manual says to do to use this
2 equipment. That's what Mr. Papadakis did to use
3 this equipment.

4 Q With respect to the sentence I just read did you
5 copy that from Mr. Sanderson's report?

6 A No. I believe we both discussed the way this is
7 done.

8 Q You discussed -- did you have a discussion
9 specifically with respect to what I just read?

10 A I believe we did.

11 Q Did you put down into your manual what you
12 learned from, or in your report what you learned
13 from your discussion with him?

14 A We both discussed it. Both put it in writing.
15 And we each have copies of what we wrote.

16 Q Going down, sir, to the next page of your report,
17 the third paragraph down which begins with "the
18 use of the incorrect hand lever". Your report
19 says, quote, The use of the incorrect hand lever
20 allowed Papadakis to go over center with the
21 pivot arm when he engaged the Hy-Rail gear into
22 the rail position. When he attempted to raise
23 the guide wheel at the end of his inspection he
24 experienced free movement of the upper socket

1 when he pushed down to release the wheel, end of
2 quote.

3 Did I read that correctly?

4 A Correct.

5 Q If you would look down at Mr. Sanderson's report,
6 fifth paragraph down which begins with the words
7 "what I believe happened", okay. Further in the
8 sentence, quote, While using an incorrect hand
9 lever from a different model to put the Hy-Rail
10 guide wheels into rail position, went over center
11 with the pivot arm allowing left front guide
12 wheel to lock in the rail position. However, at
13 the end of his trip when he went to release the
14 pressure on the left front guide wheel unit he
15 experienced free movement of the upper socket
16 when he pushed down to release the loaded
17 pressure, end of quote.

18 Did I read that correctly?

19 A Yes.

20 Q It's virtually the same thing that you have in
21 your report, correct?

22 A Correct.

23 Q Right?

24 A Correct.

1 Q Again, did you copy this statement that you made
2 in your report from Mr. Sanderson's report?

3 A No.

4 Q It's just, it's your testimony that the language
5 you used was so close to the language that Mr.
6 Sanderson used because you had a conversation
7 about this?

8 A We were on the phone together discussing how this
9 could have happened, correct.

10 Q Were you writing at the time you were --

11 A Yes.

12 Q So you were writing at the same time you were
13 talking with him?

14 A We were talking. I told him I wanted notes on
15 his end and I would give him notes on my end.

16 Q So you're having this telephone conversation as
17 you're actually typing your report?

18 A He was making notes about what I was saying. I
19 was making notes about what he was saying. And
20 then we exchanged copies to make sure we were
21 both on point.

22 Q Well let me just back up. You were making
23 handwritten notes or you were typing a report?

24 A Making handwritten notes.

1 Q Because at the beginning of the deposition I
2 asked you about notes. You said the only notes
3 you had in that bag were notes pertaining to your
4 inspection. Do you remember that?

5 A That's all I got in that bag.

6 Q That was your answer. My question was: do you
7 have any notes?

8 A I don't.

9 Q Well you just told me about these notes that you
10 have with respect to your conversation with Mr.
11 Sanderson?

12 A Yeah.

13 Q Well do those fall under the definition of notes
14 in this case?

15 A You asked me if I had any notes. I don't have
16 those notes.

17 Q Where are they?

18 A Probably in the landfill somewhere.

19 Q You threw them out?

20 A I make notes, a million notes a day off the
21 phone. When I'm done with them I get rid of
22 them.

23 Q You had notes of a conversation with a potential
24 witness in this case, you have virtually

1 identical language in your report that he has in
2 his, you're now telling me that you were making
3 these notes contemporaneous in time with your
4 conversation with him and you threw them out?

5 MR. BYRNE: Objection. Asked and answered.

6 Q Is that what you're saying, sir?

7 MR. BYRNE: The question has been asked and
8 already answered.

9 Q You threw them out, sir? You don't want to
10 answer it again?

11 MR. BYRNE: He's already answered it.

12 A I've already answered the question.

13 MR. BYRNE: He already answered it.

14 Q Does your report essentially reflect what you had
15 written in those handwritten notes?

16 A Yes.

17 Q Going further down in that same paragraph we just
18 read from your report, the last two sentences,
19 quote, When he pushed down to raise the guide
20 wheel to the highway position, he could not lock
21 it into position because the pivot arm was over
22 center. He would have to raise the wheel by
23 other means and chain it to the frame in the
24 upper position for highway travel, end of quote.

1 Did I read that correctly?

2 A Correct.

3 Q Going over to Mr. Sanderson's report, the very
4 bottom of the paragraph we were earlier reading
5 from, quote, the last two sentences, midway
6 through, quote, When he inserted the bar into the
7 lower socket and pushed down to raise guide wheel
8 to highway position he would not be able to lock
9 it because pivot arm would be in the way. He
10 would have to either raise the vehicle high
11 enough to replace the pivot arm or manually raise
12 the wheel and tie or chain it in the upper
13 position for highway travel, end of quote.

14 Did I read that correctly?

15 A Yes, you did.

16 Q Again, it's about the same thing that you have in
17 your report, correct?

18 A Significant differences and noting as we're
19 talking, but, yeah, it's close.

20 Q So there are no significant differences, correct?

21 A I just said there were.

22 Q What's the significant difference, sir?

23 A Well I had discussed how the pivot arm would be
24 over-centered. He discussed how it would be in

1 the way.

2 Q Anything else?

3 A Well he's discussing how high enough he'd have to
4 lift the vehicle to replace the pivot arm.

5 Q You left that part out, right?

6 (Whereupon, witness places eye
7 glasses on conference table)

8 Q Did you leave that part out?

9 A These are my notes. These are the notes I took
10 during our conversation. These are the notes he
11 took during his conversation. You can compare
12 them all you want.

13 Q I'm going to continue to do so. So that
14 statement that I just read was again something
15 that you guys were talking about and that you
16 wrote down in these notes which you've now thrown
17 out contemporaneous in time with the
18 conversation, correct?

19 A You're testifying now so I can't answer what
20 you're testifying for me.

21 Q No, sir, I'm not testifying.

22 A You're telling me everything I did.

23 Q I'm just trying to get it clear, sir. I'm going
24 to ask it again. The statement I just read from

1 your report was something that you wrote down in
2 these handwritten notes contemporaneous to the
3 time that you actually had the conversation with
4 Mr. Sanderson, correct?

5 A Correct.

6 MR. BYRNE: Objection.

7 Q What you wrote down was based on your
8 conversation with Mr. Sanderson, correct?

9 MR. BYRNE: Objection.

10 A No.

11 Q Ultimately that statement found its way into your
12 report, correct?

13 A What statement are we speaking of?

14 Q The one you wrote down and the one which I just
15 read.

16 MR. BYRNE: It is in his report. You've
17 already marked it as --

18 Q Right?

19 A My report is my report. You're reading sections
20 of it and asking if I wrote it. Yes, I did.

21 Q The statement I just read came from your notes
22 that you took based on your conversation with Mr.
23 Sanderson, correct?

24 MR. BYRNE: Objection.

1 A I've answered that already.

2 Q No, you haven't.

3 A Several times.

4 Q No, you haven't.

5 MR. BYRNE: Could I ask you to have the
6 court reporter read that question again.

7 MR. FLYNN: I'll read it again.

8 Q The statement that I just read, and we'll go back
9 and read it if you want to, but the statement I
10 just read was a statement which was in your
11 handwritten notes which were made at the time you
12 were speaking with Mr. Sanderson and was
13 ultimately, and which you ultimately put into
14 this report, correct?

15 MR. BYRNE: Objection.

16 A Once again, correct.

17 Q Good. The next paragraph of your report says in
18 the first sentence, quote, There are safety
19 features of the Hy-Rail gear that are built into
20 this unit to prevent it from going over center or
21 overcam. The correct lever as identified in the
22 Hy-Rail gear literature has bends in it which
23 cause the lever to hit the crane or the ground
24 before allowing the gear to overcam, end of

1 quote.

2 Did I read that correctly?

3 A Correct.

4 Q The first sentence of the next paragraph of Mr.
5 Sanderson's report is, quote, There are safety
6 appliances built into the 0307 Hy-Rail easy lift
7 conversion which helps prevent the unit from

8 going over center or overcamming. The correct
9 hand lever has bends which hit before allowing
10 over-centering, end of quote.

11 Did I read that correctly?

12 A Correct.

13 Q That's pretty much the same as what you've
14 written in your report, correct?

15 A My report has the notes I took during our
16 conversation.

17 Q That was going to be my next question. But it's
18 pretty much the same as what's in Mr. Sanderson's
19 report, correct?

20 A His report indicates his recollection of our
21 conversation. His comments and my comments, as I
22 recollect them, were what we discussed that day.

23 Q That's how you generated your report, correct?

24 A No.

1 Q Well it was based in part on your conversations
2 you had with Mr. Sanderson, correct?

3 MR. BYRNE: Objection. Asked and answered.
4 It's already been explained.

5 Q Right?

6 MR. BYRNE: The testimony was that Sanderson
7 was a resource. That was the testimony today.

8 MR. FLYNN: I understand. It's a different
9 question. Could you read back the question,
10 please, and have him answer it.

11 (Whereupon, Court Reporter reads back
12 Question located on Page 205, Line 17)

13 A And Sanderson was a resource. He's identified in
14 the report as a resource. His name is on the
15 bottom line same as mine is as a resource and as
16 a developer of the report.

17 Q The next sentence, the first sentence in the next
18 paragraph is, The vehicle did not have an
19 operational manual in the vehicle for Papadakis
20 to consult at the time of this accident, end of
21 quote.

22 Did I read that correctly?

23 A Yes.

24 Q You have read his deposition, correct?

